

BELLWETHER EXPLORATION CO.

IBLA 82-1318

Decided January 4, 1984

Appeal from decision of Oregon State Office, Bureau of Land Management rejecting noncompetitive oil and gas lease offer. OR 28087 (Wash).

Affirmed.

1. Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

An oil and gas lease offer must be rejected when the land applied for has been leased to a senior offeror under a proper offer.

APPEARANCES: Alan B. Nicol, executive vice president, Bellwether Exploration Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Bellwether Exploration Company has appealed from a decision of the Oregon State Office dated July 23, 1982, which rejected its lease offer OR 28087 (Wash.), for the reason that the lands requested are included in oil and gas leases issued pursuant to prior offers. 1/

Appellant challenges the issuance of the prior leases, stating on appeal that:

1/ The two leases cited by BLM were both issued to May Petroleum, Incorporated. They embraced the following lands:

<u>Serial Number</u>	<u>Date Filed</u>	<u>Willamette Meridian</u>
OR 26053-WA	March 13, 1981	T. 20 N., R. 20 E.
OR 26650-WA*	May 11, 1981	Sec. 1, Lots 1, 2, 3, 4, S 1/2 N 1/2, S 1/2 Sec. 4, W 1/2 SW 1/4, SE 1/4 SW 1/4 SE 1/4 SE 1/4; Sec. 6, Lots 1-7, SE 1/4 NW 1/4, E 1/2 SW 1/4, S 1/2 NE 1/4, E 1/2 SW 1/4, S 1/2 NE 1/4, SE 1/4; Sec. 12, N 1/2 NE 1/4, W 1/2 NW 1/4, S 1/2

"[P]rior offers" were faulty and incomplete and should not have issued to leases. According to the regulations (3102.7) and the instructions contained on the reverse side of the approved Offer to Lease Form ". . . A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. ." is required on each and every offer to lease and in the space provided therefor as no. 6 on offer to lease forms. An examination of each of the said "prior offers", i.e. OR-26053-WA and OR-26650-WA, will reveal that the offeror did not check either the "is" or the "is not" sole party in interest block provided in no. 6 of said offers to lease. An examination of the case file for said offers will further disclose that in fact, the respective offerors were not the sole party in interest and therefore the said offeror should have checked the "is not" sole party in interest space and also shown on the face of said offers the names of all other interested parties.

Appellant requests that these leases be cancelled and its lease be issued.

The record shows that appellant filed its offer on July 20, 1981, to lease 1844.02 acres in T. 20 N., R. 20 E., Willamette meridian, Kittitas County, Washington. May Petroleum, Incorporated (May), had previously filed over-the-counter offers OR 26053 (Wash.) and OR 26650 (Wash.), covering the same lands on March 13 and May 11, 1981, respectively. The leases issued to May effective July 1 and August 1, 1982. Our review of these lease records confirms appellant's observation that May Petroleum, Incorporated, neglected to check the blank in item No. 6 on the lease forms indicating whether or not the corporation was the sole party in interest in these offers.

Item No. 6 on the form specifically states as follows: "Offeror ☐ is ☐ is not the sole party in interest in this offer and lease, if issued. (If not sole party in interest, statements should be filed as prescribed in Item 6 of the Special Instructions.)" 2/

Although the blanks were not checked so as to indicate whether the corporation was or was not the sole party in interest in these offers, pertinent information was submitted in both instances that clearly indicated the existence of other parties in interest and also provided the required documentation of their interest and qualifications. A letter transmitting application

2/ Special Instruction 6 provides:

"Offeror must indicate whether or not he is the sole party in interest in this offer and the lease, if issued. If not the sole party in interest, the offeror must submit at the time the offer is filed a signed statement setting forth the names of the other interested parties. If there are other parties interested in the offer, a separate statement must be signed by them and the offeror, setting forth the nature and extent of the interest of each, the nature of the agreement between them if oral, and a copy of the agreement if filed within 15 days after the filing of the lease offer. All interested parties must furnish evidence of their qualifications to hold such lease interests."

OR 26650 (Wash.), dated May 5, 1981, to BLM specifically states: "Also enclosed are statement of interests and qualifications which may be filed with the lease." The enclosed information shows that three consultants had an agreement with the corporation to receive overriding royalty interests from the leases. ^{3/} Copies of the same documentation for these consultants was also submitted to BLM for OR 26053 (Wash.) March 27, 1981, within the 15-day time period granted for filing separate statements as to the agreement, as specified in the special instructions on the lease form. ^{4/} These documents must be considered in pari materia with the offers filed by May. See generally Jas. O. Breene, Jr., 39 IBLA 43 (1979); John Oakason, 21 IBLA 185 (1975).

Based on these facts, we cannot find that May's offers were defective prior to the receipt of appellant's offer to lease the same lands. As to OR 26650 (Wash.), the pertinent information was submitted along with the lease forms which made the necessary showing as to all parties in interest. As to OR 26053 (Wash.), the necessary information was timely submitted to BLM within the allotted 15-day period provided in the special instructions and made the showing as of March 27, 1981, well before appellant's offer was filed. Even if it were concluded that OR 26053 (Wash.) was defective when filed since the 15-day period only properly applies to the separate statements, and not to the initial declaration as to whether the offeror is the sole party in interest, it is still clear that this deficiency was cured prior to the filing of appellant's offer. ^{5/}

In both situations, BLM was easily able to determine on the face of the lease records as a whole that the offeror was not the sole party in interest and therefore, the failure to check the blank on the offer should not be considered a fatal defect. Thus, the offers were properly accepted and the leases properly issued.

[1] As has been noted many times, a junior offer is properly rejected where it includes land designated in a senior offer and the senior offer subsequently is accepted and the lease is properly issued. Irvin Wall, 69 IBLA 175 (1982); Irvin Wall, 68 IBLA 243 (1982); David A. Provinse, 33 IBLA 312 (1978). BLM properly rejected appellant's offer.

^{3/} The statement of qualifications and holdings were included for Lyle A. Hayle, Phillip H. Wach, and O. Clair Adams. Each is to receive a 1.66667 percent overriding royalty interest in the leases pursuant to an agreement with the corporation, a copy of which was also submitted to BLM.

^{4/} The required information was submitted with a cover letter dated Mar. 26, 1981, which specifically referred to item 6 in the offer.

^{5/} This Board has noted in the over-the-counter filing procedure where the offeror has failed to accompany the offer with an interest statement as required by 43 CFR 3102.7, and the offer is rejected for failure to file such statements, that offer may be reinstated when the required filing is made and the offer will earn priority as of the time the required filing is made. Metro Energy, 52 IBLA 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

